

AMENDED IN SENATE SEPTEMBER 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 198

Introduced by Committee on Budget (Laird (Chair), Arambula, Beall, Berg, Brownley, Dymally, Feuer, Hayashi, Hernandez, Jones, Mullin, Ruskin, Swanson, and Wolk)

January 25, 2007

An act relating to the Budget Act of 2007 to amend Section 17942 of, and to add Section 19394 to, the Revenue and Taxation Code, relating to limited liability companies, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 198, as amended, Committee on Budget. ~~Budget Act of 2007.~~
Income taxes: limited liability companies: apportionment.

The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources reportable to this state. That law defines total income as gross income, as defined, plus the cost of goods sold, as specified.

This bill, for taxable years beginning on and after January 1, 2007, would clarify that total income from all sources reportable to this state means gross income, as defined, plus the cost of goods sold, as specified, derived from or attributable to this state within the meaning of specified provisions of the Corporation Tax Law relating to apportionment and allocation, as provided. This bill would make legislative findings and declarations regarding the necessity for the equitable treatment of limited liability companies.

Existing law provides, for the purposes of specified taxes, that if any deduction, credit, or exclusion administered under the Personal Income Tax Law or the Corporation Tax Law is finally adjudged discriminatory against a national banking association under a specified federal law, or is for any reason finally adjudged invalid, or discriminatory under the California Constitution or the laws or Constitution of the United States, the tax shall be recomputed by the Franchise Tax Board, as specified.

This bill would provide that if a fee imposed under a specified section is finally adjudged as discriminatory or unfairly apportioned under the California Constitution or the laws or the Constitution of the United States, the fee of a disfavored taxpayer that files, or has filed, a timely claim for refund asserting discrimination or unfair apportionment shall be recomputed by the Franchise Tax Board for the taxable year in question, as of the time of allowance of the recomputation, only to the extent necessary to remedy the discrimination or unfair apportionment not otherwise relieved by existing law, and that the amount of the fee as originally computed shall be subject to the provisions relating to original computations.

This bill would make findings with regard to actions for refunds of fees.

This bill would take effect immediately as a tax levy.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2007.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares that the*
- 2 *changes made by this act with respect to Section 17942 of the*
- 3 *Revenue and Taxation Code are necessary to provide for the*
- 4 *equitable tax treatment for limited liability companies in light of*
- 5 *the following:*
- 6 (i) *The California Limited Liability Act (Ch. 1200, Stats. 1994)*
- 7 *authorized limited liability companies for the first time to organize*
- 8 *and register in the state. The Legislature was advised that an*
- 9 *increasing number of businesses would organize as limited liability*
- 10 *companies rather than corporations, resulting in a decrease in*
- 11 *income and franchise tax revenue. To offset the loss in tax revenue,*

1 *certain limited liability companies are required to pay an annual*
2 *fee based on total income from all sources reportable to the state.*

3 (b) *The Legislature finds and declares that its intent in adopting*
4 *Section 17942 was to ensure that limited liability companies pay*
5 *a fair and appropriate amount to the State of California, consistent*
6 *with constitutional limits, and the changes made by this act with*
7 *respect to Section 17942 serve a public purpose and are in*
8 *furtherance of the public interest in the fair taxation of limited*
9 *liability companies doing business in the state by applying the*
10 *apportionment and allocation provisions to total income for*
11 *purposes of determining the amount of the limited liability company*
12 *fee.*

13 (c) *The Legislature further finds and declares that this act serves*
14 *a public purpose and sound tax policy by affording equitable tax*
15 *treatment to many taxpayers doing business in this state with the*
16 *expectation of paying a limited liability company fee that is relative*
17 *to the level of activity in the state.*

18 SEC. 2. *Section 17942 of the Revenue and Taxation Code is*
19 *amended to read:*

20 17942. (a) *In addition to the tax imposed under Section 17941,*
21 *every limited liability company subject to tax under Section 17941*
22 *shall pay annually to this state a fee equal to:*

23 (1) *Nine hundred dollars (\$900), if the total income from all*
24 *sources ~~reportable~~ derived from or attributable to this state for the*
25 *taxable year is two hundred fifty thousand dollars (\$250,000) or*
26 *more, but less than five hundred thousand dollars (\$500,000).*

27 (2) *Two thousand five hundred dollars (\$2,500), if the total*
28 *income from all sources ~~reportable~~ derived from or attributable*
29 *to this state for the taxable year is five hundred thousand dollars*
30 *(\$500,000) or more, but less than one million dollars (\$1,000,000).*

31 (3) *Six thousand dollars (\$6,000), if the total income from all*
32 *sources ~~reportable~~ derived from or attributable to this state for the*
33 *taxable year is one million dollars (\$1,000,000) or more, but less*
34 *than five million dollars (\$5,000,000).*

35 (4) *Eleven thousand seven hundred ninety dollars (\$11,790), if*
36 *the total income from all sources ~~reportable~~ derived from or*
37 *attributable to this state for the taxable year is five million dollars*
38 *(\$5,000,000) or more.*

39 ~~(5) This subdivision shall apply to taxable years beginning on~~
40 ~~or after January 1, 1997.~~

1 ~~(6) The changes made to this subdivision by the act adding this~~
 2 ~~paragraph shall apply to taxable years beginning on or after January~~
 3 ~~1, 2001.~~

4 (b) (1) (A) For purposes of this section, “total income *from all*
 5 *sources derived from or attributable to this state*” means gross
 6 income, as defined in Section 24271, plus the cost of goods sold
 7 that are paid or incurred in connection with the trade or business
 8 of the taxpayer. However, “total income *from all sources derived*
 9 *from or attributable to this state*” shall not include allocation or
 10 attribution of income or gain or distributions made to a limited
 11 liability company in its capacity as a member of, or holder of an
 12 economic interest in, another limited liability company if the
 13 allocation or attribution of income or gain or distributions are
 14 directly or indirectly attributable to income that is subject to the
 15 payment of the fee described in this section.

16 (B) For purposes of this section, “total income *from all sources*
 17 *derived from or attributable to this state*” shall be determined
 18 using the rules for assigning sales under Sections 25135 and 25136
 19 and the regulations thereunder, as modified by regulations under
 20 Section 25137, other than those provisions that exclude receipts
 21 from the sales factor.

22 (2) In the event a taxpayer is a commonly controlled limited
 23 liability company, the total income from all sources ~~reportable~~
 24 *derived from or attributable to this state*, taking into account any
 25 election under Section 25110, may be determined by the Franchise
 26 Tax Board to be the total income of all the commonly controlled
 27 limited liability company members if it determines that multiple
 28 limited liability companies were formed for the primary purpose
 29 of reducing fees payable under this section. A determination by
 30 the Franchise Tax Board under this subdivision may only be made
 31 with respect to one limited liability company in a commonly
 32 controlled group. However, each commonly controlled limited
 33 liability company shall be jointly and severally liable for the fee.
 34 For purposes of this section, commonly controlled limited liability
 35 companies shall include the taxpayer and any other partnership or
 36 limited liability company doing business (as defined in Section
 37 23101) in this state and required to file a return under Section
 38 18633 or 18633.5, in which the same persons own, directly or
 39 indirectly, more than 50 percent of the capital interests or profits
 40 interests.

1 (c) The fee assessed under this section shall be due and payable
2 on the date the return of the limited liability company is required
3 to be filed under Section 18633.5, shall be collected and refunded
4 in the same manner as the taxes imposed by this part, and shall be
5 subject to interest and applicable penalties.

6 *SEC. 3. Section 19394 is added to the Revenue and Taxation
7 Code, to read:*

8 *19394. If the fee provided under Section 17942 is finally
9 adjudged to be discriminatory or unfairly apportioned under the
10 California Constitution, or the laws or the Constitution of the
11 United States, the fee of a disfavored taxpayer that files, or has
12 filed, a timely claim for refund within the period allowed by this
13 part asserting discrimination or unfair apportionment shall be
14 recomputed by the Franchise Tax Board for the taxable year in
15 question, as of the time of allowance of the recomputation, only
16 to the extent necessary to remedy the discrimination or unfair
17 apportionment that is not otherwise relieved by Section 19393 and
18 the amount of the fee, as originally computed, shall be subject to
19 the provisions hereof relating to original computations.*

20 *SEC. 4. (a) The Legislature is aware of pending litigation
21 challenging the validity of the fee imposed pursuant to Section
22 17942 of the Revenue and Taxation Code.*

23 *(b) The amendments made by Section 2 of this act to Section
24 17942 of the Revenue and Taxation Code, if enacted, shall apply
25 to taxable years beginning on and after January 1, 2007.*

26 *(c) Section 19394 of the Revenue and Taxation Code, as added
27 by Section 3 of this act, shall apply to suits for refunds filed on or
28 after the date of enactment of this act and suits for refunds filed
29 before that date that are not final as of that date.*

30 *(d) Refunds of fees payable as a result of the litigation described
31 in subdivision (a) shall be limited to the amount by which the fee
32 paid, and any interest assessed thereon, exceeds the amount that
33 would have been assessed if the fee had been computed in
34 accordance with subparagraph (B) of paragraph (1) of subdivision
35 (b) of Section 17942 of the Revenue and Taxation Code, as added
36 by the amendments to that section made by Section 2 of this act.*

37 *(e) It is the intent of the Legislature that no inference be drawn
38 in connection with the amendments made by this act to Section
39 17942 of the Revenue and Taxation Code for any taxable year
40 beginning before January 1, 2007.*

- 1 *SEC. 5. This act provides for a tax levy within the meaning of*
- 2 *Article IV of the Constitution and shall go into immediate effect.*
- 3 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
- 4 ~~changes relating to the Budget Act of 2007.~~